

Applicant : William R. Heneveld, Sr.  
Appln. No. : 10/635,104  
Page : 11

### REMARKS

Claims 1-18, 27-32, and 36-43 are pending in the present application. Reconsideration is respectfully requested for the following reasons.

Applicant appreciates and acknowledges the courtesies extended during a telephone interview conducted September 20, 2005, in which the rejected independent claims, cited art, proposed amendments, and new claims were discussed. The above present amendment and discussion below are believed to be consistent with the interview. It is noted that the inventor was also present and part of the interview.

Pursuant to the Examiner's request, the hyperlink in the specification, page 1, line 20 has been deleted.

Attached is an amended Fig. 7 which now labels the cross section as "X-X," which is referred to in the specification on page 4, line 7. No new subject matter is included. Applicant appreciates the Examiner's detailed review. The amended drawing is attached to the present papers and is prepared as a formal set of drawings.

Claims 3, 23, and 25 were rejected for technical reasons in regard to antecedent basis and clarity. Claims 3, 23, and 25 have been clarified and accordingly are now believed to be clear and definite under §112. Applicant gratefully acknowledges the allowability of claims 5-8 and 31. The claims 5, 6, 8, and 31 have been amended to be in independent form including their base claim and any intervening claims. Claim 7 is dependent on claim 6. Accordingly, claims 5-8 and 31 are believed to be in condition for allowance.

As discussed during the interview, claim 1 defines (and the cited art does not disclose or suggest) an adjustable tool including, among other things, a cover that shields teeth from dirt but that leaves exposed a portion of overlapping flanges. (See the specification, page 6, line 15+, regarding the overlapping flanges 46, 56, 57, and page 7, line 2+ regarding the cover, and see Figs. 1, 2, 13, 20, 21.) Based on the interview, this language defines over the cited art and hence the Examiner will favorably consider this language, but may of course conduct additional searching. Claims 2-4, 9-18, and 41 are dependent on claim 1 and are also believed to be in condition for allowance for the reason that they are dependent on an allowable base claim ... and also for the reason that they define non-obvious combinations with the

Applicant : William R. Heneveld, Sr.  
Appln. No. : 10/635,104  
Page : 12

subject matter of claim 1.

New claim 36 includes language not unlike amended claim 1, and is allowable for similar reasons. In particular, claim 36 defines (and the cited art does not disclose or suggest) an adjustable tool including, among other things, a tool head, a handle, and an adjustment mechanism having overlapping flanges on the tool head and handle, and further including "a cover that closely engages an outer surface of the overlapping flanges to prevent dirt and debris from entering an area around the adjustment mechanism, but that leaves at least a part of one of the overlapping flanges exposed so that the tool head can be angularly adjusted without the tool head distorting the cover and without allowing dirt to enter the adjustment mechanism". Based on the interview, this language defines over the cited art and hence the Examiner will favorably consider this language, but may of course conduct additional searching. Claim 37 is dependent on claim 36 and is allowable for the reason that claim 36 is allowable, and further is allowable since claim 37 defines non-obvious subject matter in combination with the recited elements of claim 36.

As discussed during the interview, claim 27 defines (and the cited art does not disclose or suggest) an adjustable tool including, among other things, a button with teeth having angled outer edges that engage mating teeth with angled surfaces on the handle, the angled outer edges and angled surfaces reducing a distance of movement of the button in order to engage or disengage the first teeth. (See the specification, page 7, line 29+ and related text.) Based on the interview, this language defines over the cited art and hence the Examiner will favorably consider this language, but may of course conduct additional searching. Claims 28-30, 32, and 42 are dependent on claim 27 and are also believed to be in condition for allowance for the reason that they are dependent on an allowable base claim ... and also for the reason that they define non-obvious combinations with the subject matter of claim 27.

As discussed during the interview, claim 38 is also believed to be allowable. Claim 38 recites an adjustable tool including a head, a handle connected and adjustable to the head for adjustment around a pivot axis, and a button mounted on the handle adjacent the pivot axis but spaced therefrom. (See the specification, page 7, line 13+.) The button is configured to directly release and engage the head allowing adjustment and securing of the head to the handle

Applicant : William R. Heneveld, Sr.  
Appln. No. : 10/635,104  
Page : 13

in at least two different positions.

The present inventor strongly argues that Chuang 5,265,969 is not analogous art and hence should not be considered or applied to the claim 38 for the following reasons. Chuang '969 states that it relates to a "collapsible chair" (see column 1, line 6). Further, Chuang '969 states that "In adjusting process, a user may not have enough force to sustain the weight of the thing to be adjusted in its angle." (see column 1, lines 15-17) This is consistent with Chuang teaching that his joint will be used on a chair, where a user will lift and hold the chair in the air (i.e. "sustain the weight of the thing to be adjusted") while adjusting an angle of the joint taught in Chuang '969. This is NOT consistent with a tool with a handle which, by its nature, must be light enough to be "liftable" and able to be easily manipulated while lifted in order to facilitate its use. Still further, Fig. 1 teaches first and second chair-leg-like rod-shaped beams coming together, which is consistent with a chair leg ... but NOT consistent with a tool or handle as defined.

It is noted that Chuang is NOT easily found via patent searching ... unless you START with the present invention ... which is improper. For example, a computer search for the word "joint" finds 212,257 patents. Even a computer search limited to abstracts having the word "joint" finds 26,992 patents. It is an overwhelming task to pick out Chuang '969 from such a huge stack of patents. Numerous narrower searches don't even find Chuang '969. For example, the following searches of patent abstracts did NOT find Chuang '969: Example search 1) "flexible" and "joint" (1780 patents), Example search 2) "teeth" and "joint" (381 patents), Example search 3) "releasable" and "joint" (221 patents)", Example search 4) "lockable" and "joint" (84 patents), Example search Example search 5) "angularly" and "adjustable" and "joint" (40 patents), Example search 6) "dirt" and "joint" (48 patents), and Example search 7) "adjustable" and "garden" and "tool" (12 patents).

The standard for whether art is pertinent enough to have been considered by a person of ordinary skill is perhaps best stated by Harmon's treatise "Patents and the Federal Circuit", 4<sup>th</sup> edition, page 131-133, where it states, "However, that [pertinent] prior art is only that which the hypothetical person would have selected without the advantage of hindsight and may not be gathered with the claimed invention in mind. ... [T]he actual inventor is *not* presumed to have

Applicant : William R. Heneveld, Sr.  
Appln. No. : 10/635,104  
Page : 14

had knowledge of the prior art.” (Emphasis added.) The treatise further states that two criteria are used to determine whether prior art is analogous, “(1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor’s endeavor, whether it still is reasonably pertinent to the particular problems with which the inventor is involved”. As discussed during the interview, the present inventor strongly believes that Chuang ‘969 is not in the same field of endeavor, since Chuang ‘969 concerns chairs and does appear to be in art relevant to “tools” or “handles.” As also discussed in the interview, the present inventor further strongly believes that Chuang ‘969 is not solving the particular problem facing the present inventor, which is focused on an adjustable tool ... which inherently includes all of the structural requirements necessary for working with high torsional forces, in a dirty environment, and where the user interfaces with a handle. Instead, Chuang ‘969 teaches away from an adjustable tool or handle, based on a close inspection of its disclosure and drawings, since it concerns a “clean environment” where a chair would be used, and since it does not address the problems and concerns associated with adjustment on a tool or handle.

As an aside, it is noted that the cited art of Tung 6,364,562 is not believed to be relevant for similar reasons given above in regard to Chuang ‘969. Specifically, Tung concerns a sunshade. Tung does not involve a tool or handle, nor a structure that must deal with high forces comparable to the forces commonly exerted on a tool. Nor is Tung intended for use in a dirty environment, nor where a user interfaces with a handle.

Accordingly, Chuang ‘969 (and Tung ‘562) are NOT considered to be relevant. Certainly, their mere existence does not by itself justify their combination with other art. As noted above in regard to searching for Chuang, it is Applicant’s position that it is VERY difficult to find Chuang (or Tung) merely based on wanting to find an adjustable lockable joint. This leads to a conclusion that Chuang is only found by starting with the present invention, and then looking for a particular structure ... which requires improper use of hindsight ... and hence is not a legitimate basis for a rejection.

It is noted that the Examiner indicated during the interview that a declaration by an expert or by the present inventor in regard to Chuang ‘969 did not appear to be necessary ...

Applicant : William R. Heneveld, Sr.  
Appln. No. : 10/635,104  
Page : 15

and instead that the assertions during the interview were sufficiently stated for the purpose intended.

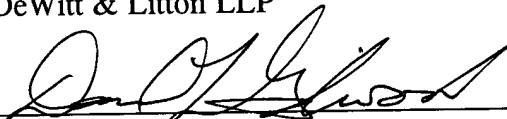
Claims 39, 40, and 43 are dependent on claim 38, and are allowable for that reason. Further, claims 39, 40 and 43 focus on language not unlike the claims 1, 27, and 42, respectively, and are allowable for the same reasons given above.

Accordingly, the pending claims are believed to be in condition for allowance, and a Notice Of Allowability is earnestly solicited.

Respectfully submitted,

Price, Heneveld, Cooper,  
DeWitt & Litton LLP

Spt 20, '05  
Date

  
Daniel L. Girdwood  
Registration No. 34 827  
695 Kenmoor, S.E.  
Post Office Box 2567  
Grand Rapids, Michigan 49501  
(616) 949-9610

DLG/dlc

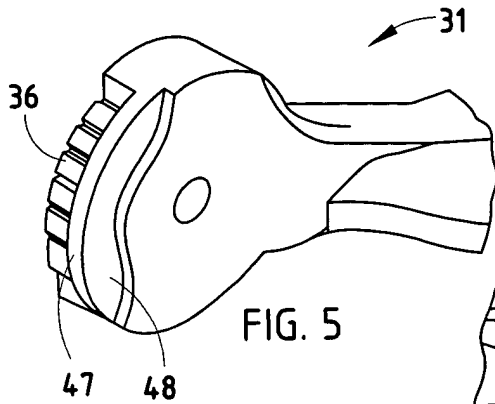


FIG. 5

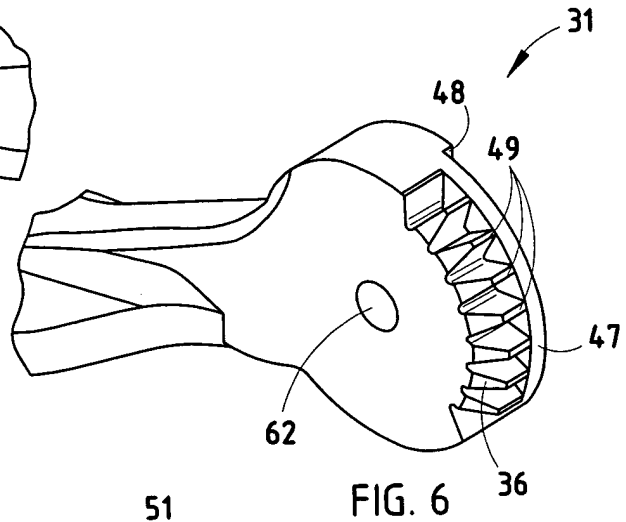


FIG. 6

Cross section  
now labeled  
"X-X"

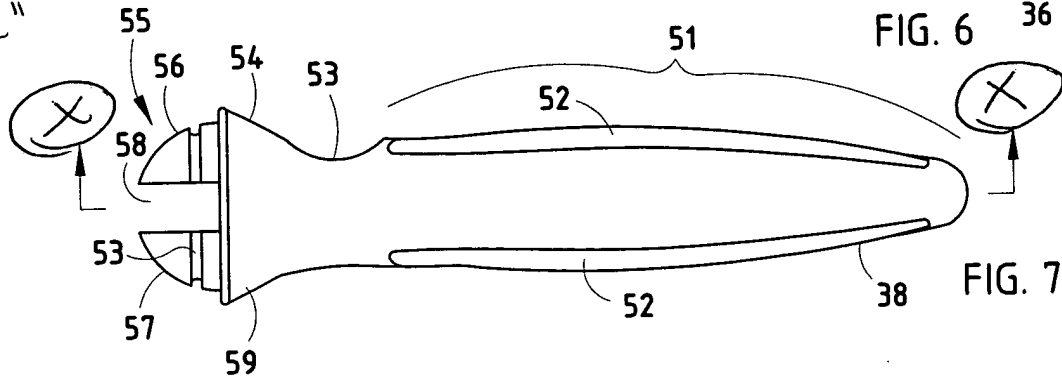


FIG. 7

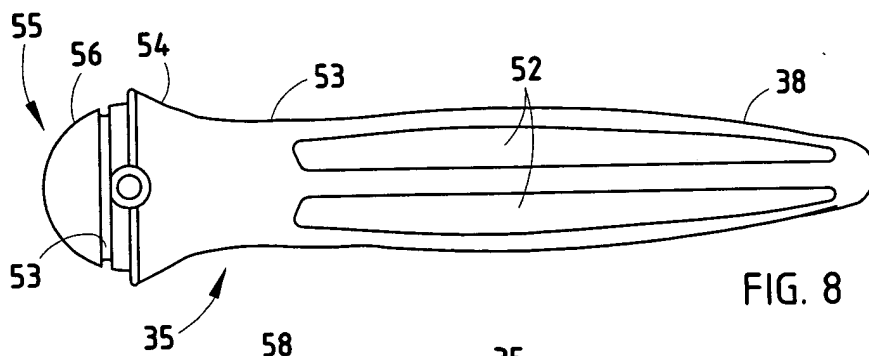


FIG. 8

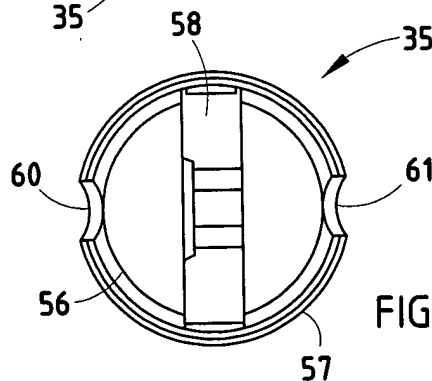


FIG. 9